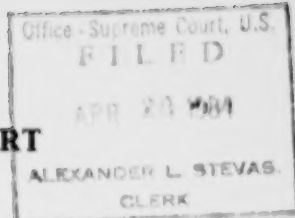


NO. 83-1548
IN THE SUPREME COURT

of the
UNITED STATES
October Term 1983



FRANK KUSTINA,
Appellant,

v.

THE CITY OF SEATTLE,
and THE HISTORIC SEATTLE PRESERVATION
and DEVELOPMENT AUTHORITY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MEMORANDUM OPPOSING CERTIORARI

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Respondent, City of Seattle, represents to the Court as follows:

1) The above-entitled cause was argued and submitted on November 9, 1983 and judgment entered on December 14, 1983 by the United States Court of Appeals for the Ninth Circuit.

2) The court of appeals: affirmed the district court's dismissal of twelve of appellant's fifteen causes of action as barred by the doctrine of res judicata;

affirmed the dismissal of one cause of action for failure to state a claim; and ordered that two state law causes of action be dismissed without prejudice for lack of pendent jurisdiction.

3) In his petition for writ of certiorari, appellant does not dispute any of the circuit court's reasons for affirming the dismissal of any of his causes of action. Instead, he asserts that as a matter of state law, the state court decisions are void and should therefore be given no res judicata effect. This issue was not raised in the district court and was not briefed on appeal but was first raised by appellant during oral argument on appeal. The court of appeals properly refused to consider the argument and limited its review to the issues decided by the district court. Furthermore, the effect to be given a state statute (Section 42.30.010 of the Revised Code of

Washington) involves no federal question and absent pendent jurisdiction, cannot be considered by the federal courts. Supreme Court review of a purely state law issue not considered by either the district court or the court of appeals is plainly inappropriate.

Petitioner's application for writ of certiorari is, therefore, not meritorious on its face and should be denied.

Respectfully submitted,

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City Attorney

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Attorneys for
Respondents